



# RECENT PUBLIC PENSION DECISIONS

MA Police Association | Plymouth, Massachusetts



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# PERAC

- ▶ The Public Employee Retirement Administration Commission (PERAC) was created for and is dedicated to the oversight, guidance, monitoring, and regulation of the Massachusetts Public Pension Systems. The professional, prudent, and efficient administration of these systems is the public trust of PERAC and each of the 105\* public pension systems for the mutual benefit of the public employees, public employers, and citizens of Massachusetts.

\* There were still 105 systems as of 10/28/14



## PERAC *(Cont'd)*

- ▶ 7 Commissioners, including a Chairman chosen by the following six members:

### THE GOVERNOR APPOINTS:

- His designee
- A representative of a public safety union
- An investment professional

### THE AUDITOR APPOINTS:

- Her designee
- President of the AFL/CIO or his designee
- A representative of the Massachusetts Municipal Association



## TWO DIFFERENT RETIREMENT PLANS

- One for those who became members of a system prior to April 2, 2012.
- One for those who became members of a system on or after April 2, 2012.

# FIRST CALCULATION UNDER THE NEW PLAN

EXAMPLE 1	POST 4/2/12 HIRE (Actual)	PRE 4/2/12 HIRE
Employment Date	4/9/2012	3/26/2012
Retirement Date	8/22/2014	8/22/2014
Age	60	60
Total Service	11.5833	11.5833
3 Year Average Salary	NA	\$17,962.09
5 Year Average Salary	\$17,676.34	NA
Age Factor	0.0145	0.02
Option A Allowance (unrounded)	\$2,968.88	\$4,161.21
Difference	\$1,192.33	

# FIRST CALCULATION UNDER THE NEW PLAN

*(Cont'd)*

EXAMPLE 2	POST 4/2/12 HIRE (Actual)	PRE 4/2/12 HIRE
Employment Date	4/9/2012	3/26/2012
Retirement Date	8/22/2014	8/22/2014
Age	60	60
Total Service	11.5833	11.5833
3 Year Average Salary	NA	\$82,667.00
5 Year Average Salary	\$80,000.00	NA
Age Factor	0.0145	0.02
Option A Allowance	\$13,436.63	\$19,151.13
Difference	\$5,714.51	

- For this case, I assumed salaries in last 5 years to range from \$75,000 to \$85,000. This example shows a bigger difference.

# FIRST CALCULATION UNDER THE NEW PLAN

*(Cont'd)*

EXAMPLE 3	POST 4/2/12 HIRE (Actual)	PRE 4/2/12 HIRE
Employment Date	4/9/2012	3/26/2012
Retirement Date	8/22/2014	8/22/2014
Age	60	60
Total Service	20	20
3 Year Average Salary	NA	\$82,667.00
5 Year Average Salary	\$80,000.00	NA
Age Factor	0.0145	0.02
Option A Allowance	\$23,200.00	\$33,066.80
Difference	\$9,866.80	

- The service in this example was increased to 20 years.

# FIRST CALCULATION IF GROUP 4

EXAMPLE 1	POST 4/2/12 HIRE (Actual)	PRE 4/2/12 HIRE
Employment Date	4/9/2012	3/26/2012
Retirement Date	8/22/2014	8/22/2014
Age	55	55
Total Service	11.5833	11.5833
3 Year Average Salary	NA	\$72,667.00
5 Year Average Salary	\$70,600.00	NA
Age Factor	0.022	0.025
Option A Allowance (unrounded)	\$17,991.18	\$21,043.09
Difference	\$3,051.91	



## FIRST CALCULATION IF GROUP 4 *(Cont'd)*

EXAMPLE 2	POST 4/2/12 HIRE (Actual)	PRE 4/2/12 HIRE
Employment Date	4/9/2012	3/26/2012
Retirement Date	8/22/2014	8/22/2014
Age	55	55
Total Service	11.5833	11.5833
3 Year Average Salary	NA	\$97,167.00
5 Year Average Salary	\$94,700.00	NA
Age Factor	0.022	0.025
Option A Allowance (unrounded)	\$24,132.65	\$28,137.86
Difference	\$4,005.22	

– Salary increased

## FIRST CALCULATION IF GROUP 4 *(Cont'd)*

EXAMPLE 3	POST 4/2/12 HIRE (Actual)	PRE 4/2/12 HIRE
Employment Date	4/9/2012	3/26/2012
Retirement Date	8/22/2014	8/22/2014
Age	55	55
Total Service	29.5	29.5
3 Year Average Salary	NA	\$97,167.00
5 Year Average Salary	\$94,700.00	NA
Age Factor	0.022	0.025
Option A Allowance (unrounded)	\$61,460.30	\$71,660.66
Difference	\$10,200.36	

- Salary increased and service increased



## **CASES OF NOTE DECIDED IN THE LAST YEAR OR SO (in alphabetical order)**

- Buonomo
- Daley
- Gaffney
- Garney
- Howard
- Hull Retirement Board (Leary)
- MacAloney
- Madden
- Ouellette
- Zavaglia



## **RETIREMENT BOARD OF SOMERVILLE v. BUONOMO & OTHERS**

**Case Citation:** 467 Mass. 662

**Date of Decision:** April 2, 2014

**In a nutshell:** A retiree who commits crimes in post-retirement employment which involve the laws applicable to his post-retirement position will still forfeit his previously awarded pension. “The statute does not say that the office or position whose laws were violated be the same as the one from which the member is receiving a retirement allowance. There simply is no such limiting language in [Section] 15(4).”



## **DALEY v. PLYMOUTH RETIREMENT BOARD & PERAC**

**Case Number: CR-13-409**

**Date of Decision: October 9, 2014**

**In a nutshell:** Even though he retired prior to July 1, 2009, Mr. Daley's service as a consultant or contractor will be subject to the post-retirement earning provisions of G.L. c. 32, Section 91(b). He must return his pension for the last four years.




# **GAFFNEY v. BRISTOL COUNTY RETIREMENT BOARD v. PERAC**

**Case No.: CR-12-505**

**Date of Decision: December 5, 2013**

**In a nutshell:** Because the Petitioner has forfeited his rights under Chapter 32 pursuant to s. 15(4), the Petitioner is not entitled to receive a retirement allowance from any Chapter 32 system based on subsequent employment and any annuity savings account deductions are required to be returned to him without interest.



## **GARNEY v. MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM**

**Case Citation:** 469 Mass. 384

**Date of Decision:** August 18, 2014

**In a nutshell:** Garney, a school teacher, plead guilty to purchasing and possessing child pornography. The Massachusetts Teachers' Retirement System ("MTRS") found Garney had forfeited his pension. Garney occasionally used his work e-mail address to access various pornographic websites. The SJC restored Garney's pension, finding that "the criminal offenses for which Garney was convicted neither referenced public employment nor bore a direct factual link to his teaching position."



## **HOWARD v. HAVERHILL RETIREMENT BOARD & PERAC**

**Case citation:** CR-07-1052

**Date of Decision:** October 24, 2014

**In a nutshell:** Police officer applied for accidental disability retirement benefits under the theory that his transfer from the position of Court Liaison to patrol officer constituted an intentional infliction of emotional harm. The Retirement Board properly denied his application because it was a bona fide transfer done in good faith, which does not constitute an intentional infliction of emotional harm.





## **HULL RETIREMENT BOARD v. CRAB, LEARY & PERAC**

**Case Citation:** 86 Mass. App. Ct. 906 (2014)

**Date of Decision:** September 16, 2014

**In a nutshell:** A police officer is entitled to have his retirement date changed after a post-retirement finding he was entitled to receive G.L. c. 41, Section 111F benefits for a certain period of time. This was true even though an agreement awarding the 111F benefits was contingent upon certain events happening, and the money representing the 111F award was held in escrow.



## MacALONEY v. WORCESTER REGIONAL RETIREMENT SYSTEM & PERAC

Case No.: CR-11-19

Decision Date: June 21, 2013

In a nutshell: Pursuant to the provisions of Section 4(2) (b), a permanent firefighter may be credited with up to 5 years of creditable service for any time they served as a call firefighter or for the time he or she was on the respective lists and/or rosters making him or her eligible for such duty, ***but they must pay for such service.***

See PERAC Memoranda 22/2013 & 33/2013




# PERAC v. MADDEN

**Case Number:** 13-P-1587

**Date of Decision:** August 7, 2014 (decided pursuant to Rule 1:28)

**In a nutshell:** You must actually perform the duties of the position from which you seek retirement in order to avail yourself of a certain group classification. Madden last performed the duties of mayor, and not fire chief, so he must be retired in Group 1 instead of Group 4.



## **OUELLETTE v. CRAB, PERAC & HAVERHILL RETIREMENT BOARD**

**Case Citation:** 80 Mass. App. Ct. 396

**Date of Decision:** September 30, 2014

**In a nutshell:** Police officer who retired for superannuation and some time later filed for accidental disability will be subject to the 75% cap on her accidental disability retirement allowance, because when she retired for superannuation she became a member inactive. Thus, she was not “continuously a member in service” from January 1, 1988 onward.



## **ZAVAGLIA v. GLOUCESTER RETIREMENT BOARD & SALEM RETIREMENT BOARD**

**Case No.: CR-09-459**

**Decision Date: July 3, 2014**

**In a nutshell:** To purchase prior non-membership service or to transfer prior non-membership service from one contributory retirement system to another, the person who seeks to purchase such service must be a member in service, actively employed in a governmental unit.